

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JOHNNY CARLTON and JANE
CARLTON, husband and wife,

Plaintiffs,

v.

Civ. No. 02-1622 RLP/DJS

THE CITY OF ALBUQUERQUE,
NEW MEXICO, a municipal
corporation, *et al.*,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the court on Plaintiffs' Motion for Remand and Brief in Support Thereof and Request for Expedited Briefing and Ruling Thereon. The court has received the submissions of the parties and heard oral arguments on February 10, 2003.

This case, which involves federal jurisdiction questions, was originally filed in the Second Judicial District Court of the State of New Mexico on November 22, 2002. The case was removed to this court on December 24, 2002. One Defendant, Perry Wilkes, was served but did not join the consent to removal. The Plaintiffs sought remand pursuant to *Cornwall v. Robinson*, 654 F.2d 685 (10th Cir. 1981), which holds that all served defendants must consent to removal. Defendant Wilkes asserts that he is a nominal party.

A party is considered nominal "if 'no cause of action or claim for relief is or could be stated against him or on his behalf" *Mathews v. County of Fremont*, 826 F. Supp. 1315, 1318 (D. Wyo. 1993) (quoting *Norman v. Cuomo*, 796 F. Supp. 654, 658 (N.D.N.Y. 1992)). "A nominal party has also been described as one that has no interest in the

outcome of the litigation other than as a stakeholder or depository." *Id.* (citing *Hewitt v. City of Stanton*, 798 F.2d 1230, 1233 (9th Cir. 1986)). A review of the complaint, which alleges various federal and state constitutional violations, as well as state tort claims, and involves allegations of conspiracy among various defendants, including Perry Wilkes, indicates that it is possible that he could have a judgment against him and that he is more than a stakeholder. This is not a comment on the veracity of the allegations or the likelihood of success; rather, it is a determination made on accepting the allegations as pled to be correct. For all of the foregoing reasons, the case is remanded to the Second Judicial District Court, County of Bernalillo, State of New Mexico.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion for Remand and Brief in Support Thereof and Request for Expedited Briefing and Ruling Thereon [Doc. 11] is GRANTED and this case is remanded to the Second Judicial District Court, County of Bernalillo, State of New Mexico.

IT IS SO ORDERED.



Richard L. Puglisi
United States Magistrate Judge
(sitting by designation)

FOR THE PLAINTIFFS: Stephanie Landry, Esq.

FOR DEFENDANT WILKES: H. Nicole Schamban, Esq.

FOR THE CITY DEFENDANTS: John Dubois, Esq.